STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

v **File No. 121942-001**

Blue Cross Blue Shield of Michigan

Respondent

Issued and entered
this 31st day of October 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On June 17, 2011, XXXXX, authorized representative of XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. The Commissioner reviewed the material submitted and accepted the request on June 24, 2011.

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the request and asked for the information it used to make its final adverse determination. The Commissioner received BCBSM's response on July 6, 2011.

This case involves medical issues so the Commissioner assigned it to an independent review organization which submitted its recommendation on July 8, 2011.

II. FACTUAL BACKGROUND

The Petitioner receives health care benefits as an eligible dependent under an individual plan. His benefits are defined in the BCBSM *Flexible Blue Individual Market Certificate* (the certificate).

On January 9, 2011, the Petitioner awoke with pain that radiated from his lower abdomen to his penis. He was unable to urinate, had testicular pain and an itchy rash on his testicles. Because of his symptoms he sought treatment in the emergency room (ER) of XXXXX Hospital.

BCBSM denied coverage for the ER care, stating that the Petitioner's condition did not constitute a medical emergency. The Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM maintained its decision and issued a final adverse determination dated April 25, 2011.

III. ISSUE

Did BCBSM correctly deny coverage for the Petitioner's ER services?

IV. ANALYSIS

The certificate covers ER services. In "Section 3: Coverage for Hospital, Facility, and Alternatives to Hospital Care," it states (p. 3.19):

- Emergency room services are payable when provided for the initial examination and treatment of medical emergencies or accidental injuries.

"Medical emergency" is defined in the certificate (p. 8.16):

> A condition that occurs suddenly and unexpectedly. This condition could result in serious bodily harm or threaten life unless treated immediately. . . .

The certificate (p. 8.10) also defines "emergency medical condition" as

> . . . a medical condition that manifests itself by acute symptoms of sufficient severity (including severe pain) which could cause a prudent layperson with average knowledge of health and medicine to reasonably expect that the absence of immediate medical attention would result in:
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> - The health of the patient . . . to be in serious jeopardy, or
> - Serious impairment to bodily functions, or
> - Serious dysfunction of any bodily organ or part . . .

In its April 25, 2011, final adverse determination, BCBSM explained its reason for denying the Petitioner's ER claims:

> . . . [O]ur medical consultants reviewed the medical record and determined that [the Petitioner's] treatment did not meet our medical emergency guidelines.
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> . . . Based on the records submitted, [the Petitioner] was treated for a fungal

> infection of the skin and dysuria. Both of which were uncomplicated and without systemic signs or symptoms. Therefore it did not meet our criteria and could have been treated in a lesser setting. He remains liable for the charge.

It is BCBSM's position that the Petitioner's ER care is not covered because it was not care for an emergency as defined in the certificate.

In reviewing this case, the Commissioner relies not only on the language of the certificate but also relevant statutory provisions. BCBSM is a health care corporation organized under and subject to the Nonprofit Health Care Corporation Reform Act (NHCCRA), MCL 550.1101 *et seq*. Section 418 of NHCCRA (MCL 550.1418) is also pertinent in this analysis:

> (1) A health care corporation certificate that provides coverage for emergency health services shall provide coverage for medically necessary services provided to a member for the sudden onset of a medical condition that manifests itself by signs and symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health or to a pregnancy in the case of a pregnant woman, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. A health care corporation shall not require a physician to transfer a patient before the physician determines that the patient has reached the point of stabilization. A health care corporation shall not deny payment for emergency health services up to the point of stabilization provided to a member under this subsection because of either of the following:
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> (a) The final diagnosis.
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> (b) Prior authorization was not given by the health care corporation before emergency health services were provided.
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> (2) As used in this section, "stabilization" means the point at which no material deterioration of a condition is likely, within reasonable medical probability, to result from or occur during transfer of the patient.

Under Section 418, ER care is covered if the sudden onset of a condition produced "signs and symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health" even if the final diagnosis determined that the condition was not truly an emergency.

The Petitioner's authorized representative, in a January 13, 2011, letter submitted with the request for an external review, explained the Petitioner's reasons for seeking care in the ER:

> . . . [The Petitioner] was awakened by pain in his lower abdomen that radiated to his penis. [He] rated the pain as 8 on a scale of 0-10. The pain was dull and constant. He complained of nausea. He stated that he did not have pain on urination, but that he could not urinate at all. He also complained of testicular pain and an itchy rash on his testicle. Notably, his initial blood pressure was abnormal at 166/69 with an abnormal heart rate of 90. An inflammation of his left testicle was noted.
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> January 9, 2011 was a Sunday. [The Petitioner's] primary care physician was not available. [The Petitioner] asserts that this constellation of symptoms, especially pain radiating from the area of his bladder to his penis and his inability to urinate, would cause a reasonable person to seek immediate medical care. . . . XXXXX Hospital ER personnel were in a much better position to evaluate [the Petitioner's] condition than BCBSM's unnamed "medical consultants." hey were present when [the Petitioner] reported his condition. They were able to see and hear [the Petitioner's] complaints. They were able to perform a medical evaluation and observe [the Petitioner] for over 3 hours. They were able to compare, in person, [the Petitioner's] complaints with his demeanor and actions.
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> [The Petitioner] was seen by a triage nurse who decided that he should be seen by the attending MD. Nobody in the ER, including the attending physician . . . suggested that [the Petitioner] should not be in the ER or that he should go home and call his primary care physician the next day. Nobody who came into contact with [the Petitioner] in the ER gave any indication that this was not a medical emergency. In fact, [the Petitioner] was not discharged from the ER until after he was finally able to produce a urine specimen for analysis. This suggests that [the Petitioner] would not have been allowed to leave the ER without producing a urine specimen, unless he left against medical advice.
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> Fortunately for [the Petitioner], his pain subsided and his urine analysis was negative. His testicular rash was successfully treated and has not returned. However, the facts remain that he went to the emergency room because he was awakened from sleep with suprapubic pain radiating to his penis. He felt nauseous and could not urinate. [He] believed his condition needed emergency care. His condition was sudden and unexpected. Moreover, it could have resulted in serious bodily harm or threaten life unless treated immediately. With acute urinary retention, you cannot urinate at all, even though you have a full bladder. Acute urinary retention is a medical emergency requiring prompt action. (Citation omitted.)

To assist the Commissioner in determining if the Petitioner had signs and symptoms that reasonably led him to believe that his health would be in serious jeopardy if he did not go to the ER, the case was assigned to an independent review organization (IRO) for analysis and a recommendation as required by Section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6). The IRO reviewer is a physician who is board certified in emergency medicine and has been in active practice for more than 15 years. The IRO report contained the following analysis:

> The MAXIMUS physician consultant noted that the member [*i.e., the Petitioner*] arrived to the emergency department by car and stated that he thought he had a hernia. The MAXIMUS physician consultant also noted that at triage, the member reported suprapubic abdominal pain that had commenced that day. The MAXIMUS physician consultant further noted that the member's pain radiated to his testicle and that he described his pain as being dull and rating an 8 on a scale of 1 to 10. The MAXIMUS physician consultant indicated that the member also reported that he was having difficulty voiding and had a rash in his groin area. The MAXIMUS physician consultant also indicated that the member reported the use of medical marijuana. The MAXIMUS physician consultant noted that the member was evaluated by a physician at 18:23 and reported testicular pain and a pruritic rash on his testicle at that time. The MAXIMUS physician consultant also noted that the member denied fever, chills, testicular pain, back pain, chest pain and shortness of breath. The MAXIMUS physician consultant further noted that vital signs on arrival revealed a blood pressure of 166/69, a pulse of 90, respirations of 18 and an oxygen saturation of 100% on room air. The MAXIMUS physician consultant indicated that the emergency room records describe the member as being in no acute distress. The MAXIMUS physician consultant also indicated that the member's abdomen was soft and non-tender with normal bowel signs. The MAXIMUS physician consultant further indicated that a rash was noted in the member's genital area. The MAXIMUS physician consultant noted that the member was initially unable to produce urine, but that after ingesting several glasses of fluid, he produced a urine specimen at 20:54. The MAXIMUS physician consultant also noted that urinalysis was negative for nitrates, leukocytes and bacteria. The MAXIMUS physician consultant further noted that repeated vital signs revealed a blood pressure of 127/80, respirations of 18, a pulse of 74 and an oxygen saturation of 98%. The MAXIMUS physician consultant indicated that the member was diagnosed with dysuria and cutaneous candiasis. The MAXIMUS physician consultant also indicated that the member was prescribed Nystatin cream and discharged at 21:00.
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> The MAXIMUS physician consultant explained that difficulty urinating is not the same thing as urinary retention. The MAXIMUS physician consultant also explained that urinary retention implies a full bladder. The MAXIMUS physician

> consultant noted that the member was able to void freely after 3 hours and several glasses of fluids. The MAXIMUS physician consultant also noted that it is not unusual for a healthy male to wait 3 hours between normal voiding. The MAXIMUS physician consultant indicated that the member refused bladder catheterization on arrival, which would have clarified whether his bladder was full and he was in retention or whether his bladder was simply empty. The MAXIMUS physician consultant noted that a patient in acute urinary retention usually welcomes bladder catheterization to relieve symptoms. The MAXIMUS physician consultant also noted that the member was not in distress and was ambulating freely. The MAXIMUS physician consultant explained that all patients presenting to the emergency department are evaluated by a medical provider and that all patients who present to a 911 receiving emergency department are required by law to be screened for a medical emergency. The MAXIMUS physician consultant also explained that the member's initial blood pressure was mildly elevated, but that this is common for many patients upon arrival to the emergency department. The MAXIMUS physician consultant indicated that all other vital signs as well as all subsequent measurements were normal.
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> The MAXIMUS physician consultant explained that the member appears by all accounts to have been ambulating and comfortable in no distress. The MAXIMUS physician consultant also explained that other than a urinalysis, the member did not require any testing or treatment, including pain medication, in the emergency department. The MAXIMUS physician consultant indicated that the member's abdominal pain was not significant enough to have warranted further laboratory studies or imaging studies. The MAXIMUS physician consultant noted that the member was diagnosed with a yeast infection and prescribed only topical cream.

The IRO reviewer concluded "that while the member's symptoms may have warranted a medical evaluation, these services did not need to be provided on an emergency basis."

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on expertise and professional judgment, and focused on the signs and symptoms present when the Petitioner arrived at the ER, not on the final diagnosis. The Commissioner can discern no reason why the IRO recommendation should be rejected in this case.

The Commissioner accepts the conclusion of the IRO that the Petitioner's signs and symptoms "warranted a medical evaluation" but were not such that that they needed to be treated as an emergency.

V. ORDER

The Commissioner upholds Blue Cross Blue Shield of Michigan's adverse determination of April 25, 2011. BCBSM is not required to cover the Petitioner's emergency room services on January 9, 2011.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.